

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 21-20405

NOE GARZA,

Hon. Matthew F. Leitman

Defendant.

/

OFFER OF PROOF REGARDING AGENT HURT'S TESTIMONY

BEFORE THE HONORABLE MATTHEW F. LEITMAN
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Thursday, November 10, 2022

APPEARANCES:

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1 Detroit, Michigan

2 Friday, November 11, 2022

3 at about 12:05 p.m.

4 — — —
5 (Court reconvened at 12:05 p.m.; Court, Counsel and
6 Defendant present.)

7 THE COURT: Okay. Welcome back. We are back on
8 the record, it's just after noon. We have picked our jury,
9 and they have gone for the day.

10 We are going to pick up with a matter that we
11 discussed at the final pretrial conference, which is hearing
12 testimony from a case agent that Mr. DePorre wishes to call
13 at trial to offer opinion evidence on the meaning of certain
14 terms that were used either during an interview or on a
15 tape-recorded conversation. And I just want to remind
16 ourselves how we got here.

17 The -- when I looked at the case law at the final
18 pretrial conference, my view was that this sort of opinion
19 testimony is permitted under Rule 702. The case law that I
20 found instructive was *United States v. Kilpatrick*, the
21 Sixth Circuit's decision, 798 F.3d 365, page 379, where the
22 court remarked that courts often qualify law enforcement
23 officers as expert witnesses under Rule 702 to interpret
24 intercepted conversations that use slang, street language,
25 and the jargon of the illegal drug trade.

1 And there was another case that Mr. DePorre brought
2 to my attention, *United States v. Williams*, a helpful
3 District Court decision, 2016 Westlaw 899145.

4 So in my view, the law, in theory, allows opinion
5 testimony as to the meaning of these sorts of slang terms.
6 The question, though, is whether Mr. DePorre has identified a
7 witness with the appropriate qualifications to be able to
8 offer that opinion testimony under Rule 702, and I decided
9 that the best way to proceed was rather than have Mr. DePorre
10 try to establish the qualifications in front of the jury,
11 with objections and argument, the most efficient way to do it
12 was to have this hearing outside of the presence of the jury,
13 for us to hear what the testimony about the officer's
14 qualifications would look like, and I can make a ruling now,
15 outside of the presentence of the jury, as to whether the
16 witness has the qualifications to offer the opinions.

17 And with that, Mr. DePorre, why don't you go ahead
18 and call our witness?

19 MR. DePORRE: Thank you, Your Honor. The witness
20 the government is going to call is ATF Agent -- Special Agent
21 Dustin Hurt. He's not the case agent assigned to this case.
22 His role in this case -- and he's been identified on the
23 witness list, initially, as a -- to -- to offer opinion
24 testimony regarding the interstate nexus of firearms and
25 ammunition, as well as the meaning of these slang terms.

1 There's no issue regarding his qualifications with respect to
2 interstate nexus, and I understand that to be an issue that
3 the defense will stipulate to, that there is a nexus, in this
4 case, for the firearm and the ammunition.

5 THE COURT: All right. Can you turn that podium so
6 you don't strain your --

7 MR. DePORRE: Hurt my neck.

8 THE COURT: Mr. Longstreet, is that correct, that
9 with respect to the interstate commerce elements, the defense
10 would be stipulating that element is satisfied?

11 MR. LONGSTREET: That is correct, as far as
12 interstate commerce, yes, that is correct, interstate nexus,
13 yes.

14 THE COURT: Okay. Thank you.

15 All right. Mr. DePorre, are we -- so I guess I
16 used the term, "case agent." I didn't mean that in the
17 technical sense, but --

18 MR. DePORRE: He is, in fact, a case agent, just
19 not on this case.

20 THE COURT: Okay. All right.

21 MR. DePORRE: The government calls Dustin Hurt.

22 THE COURT: Agent Hurt, as you are coming up, would
23 you raise your right hand?

24 Do you solemnly swear the testimony you are about
25 to give will be the truth?

1 AGENT HURT: Yes, I do.

2 THE COURT: Okay. Thank you. Please have a seat.

3 The acoustics in this room are not terrific, so as
4 you're settling in, could I ask you to keep your voice up and
5 speak slowly, so I can hear everything you have to say?

6 AGENT HURT: Yes, sir.

7 THE COURT: Thank you.

8 AGENT DUSTIN HURT,
9 called at about 12:09 p.m., was examined and testified on his
10 oath as follows:

11 DIRECT EXAMINATION

12 BY MR. DePORRE:

13 Q. Mr. Hurt, how are you currently employed?

14 A. The Bureau of Alcohol, Tobacco, Firearms and Explosives.

15 Q. And I don't know if you spelled your name, but could you
16 do that, for the record?

17 A. Yes, sir. D-U-S-T-I-N, H-U-R-T.

18 Q. You said you are employed has a special agent with the
19 Bureau of Alcohol, Tobacco, and Firearms?

20 A. Yes, sir.

21 Q. What sort of crimes do you investigate as an ATF agent?

22 A. Violent crimes, usually involving firearms.

23 Q. Do you investigate alcohol-related crimes?

24 A. Not -- not in my career thus far.

25 Q. How about tobacco-related crimes?

1 A. Same answer.

2 Q. Is your particular focus on firearm crimes?

3 A. Yes, sir.

4 Q. And where do you work?

5 A. City of Flint.

6 Q. How long have you been an police officer?

7 A. Since 2009.

8 Q. And what did you -- what sort of training did you
9 receive before you became a law enforcement officer?

10 A. In terms of education?

11 Q. Yes.

12 A. I went to Grand Valley State University, I double
13 majored in criminal justice and political science, and then
14 after that I went to grad school and got a Master's in
15 business administration.

16 Q. And your criminal justice major and political science
17 major, that resulted in a Bachelor's degree?

18 A. Yes, sir.

19 Q. In 2009, you said you began your law enforcement career.
20 How did you -- what sort of role were you in at that point?

21 A. I went through the Mid Michigan Police Academy, which is
22 in Lansing Community College, at which point after that, I
23 got employed -- I was a full-time police officer with the
24 City of Grand Ledge, which is about eight miles west of
25 Lansing.

1 Q. What year did you get your bachelor's?

2 A. Bachelor's would have been 2008.

3 Q. And when did you get your Master's?

4 A. I believe, 2014.

5 Q. And then you went to the police academy in -- was
6 that 2009?

7 A. 2009, yes.

8 Q. All right. And how many weeks or months was that
9 training?

10 A. I believe that one was between 16 weeks and 5 months,
11 somewhere in there.

12 Q. Did you have firearms training in that?

13 A. Yes, sir.

14 Q. Did you talk about different investigatory techniques?

15 A. Often.

16 Q. After that, did you -- how long were you a police
17 officer in Grand Ledge?

18 A. Just shy of three years.

19 Q. And what did you do after those three years?

20 A. I was then -- I got hired on by the Michigan State
21 Police.

22 Q. All right. Prior to joining the State Police, did you
23 have additional training for the State Police?

24 A. Additional training for the State Police?

25 Q. Did you go to the State Police Academy?

1 A. Yes, sir.

2 Q. And how many weeks was that?

3 A. That was approximately five months.

4 Q. Did you have special training in firearms there?

5 A. Yes, sir.

6 Q. And did you talk about investigatory techniques?

7 A. Often.

8 Q. Did you talk about different ways people refer to drugs?

9 A. Yes, sir.

10 Q. Did you talk about different ways people refer to
11 firearms?

12 A. Yes, sir.

13 Q. How long were you with the Michigan State Police?

14 A. Approximately seven years.

15 Q. And during that time period, where were you assigned?

16 A. I was assigned to -- I went out of recruit school I went
17 to the Flint post. I was road patrol for approximately
18 two-and-a-half, three years, and then I got on as a task
19 force officer with the FBI's Safe Streets Task Force, which
20 is a gang and violent crimes task force that operates in and
21 around the City of Flint. I was there for approximately
22 three years, and then I transferred to the Lansing post,
23 where I did road patrol for a short period of time, until I
24 got onto their violent crime initiative through MSP, Lansing
25 PD, FBI, ATF, all the agencies in that area. After about a

1 year at Lansing, I promoted to detective sergeant in the
2 polygraph unit, and I ended my career with the State Police
3 there, before coming here.

4 Q. In Flint and Lansing, did you investigate firearm
5 crimes?

6 A. Often.

7 Q. Did you speak with confidential informants?

8 A. Often.

9 Q. Did you speak with witnesses?

10 A. Often.

11 Q. Did you speak with victims?

12 A. Often.

13 Q. Did you speak -- did you listen to recorded
14 communications?

15 A. Yes, sir, many.

16 Q. What sort of communications would you listen to?

17 A. Jail calls, often jail calls, recorded, like, one-party
18 communication, things like that, and then, obviously,
19 face-to-face interviews, jailhouse interviews, stuff like
20 that.

21 Q. Did you review evidence obtained from cellular
22 telephones?

23 A. Yes, sir.

24 Q. And in reviewing those, did you review, specifically,
25 text messages?

1 A. Yes.

2 Q. In the course of your work as a law enforcement, have
3 you listened to 911 calls?

4 A. Many.

5 Q. How many -- is it possible for you to quantify the
6 amount of recorded communications discussing firearms that
7 you've listened to?

8 A. Probably not; over a hundred, less than a thousand,
9 maybe.

10 Q. If you put that in terms of hours, would you say at
11 least 50 hours or can you give the Court a number? I don't
12 mean to suggest one.

13 A. I -- 20 to 50 hours.

14 THE COURT: This is listening to recordings?

15 MR. DePORRE: Yes.

16 BY MR. DePORRE:

17 Q. Regarding, specifically, firearms?

18 A. Correct.

19 Q. How many -- if you can qualify this, how many informants
20 have you spoken with regarding firearms?

21 A. Maybe 30.

22 Q. And in those discussions, have you heard informants use
23 slang terms to describe firearms?

24 A. Yes.

25 Q. What are some of the slang terms you've heard?

1 A. Heater, piece, ratchet, tool, hammer, stick, banger.

2 There's plenty of others, I can keep going if you want.

3 Q. Have you ever heard of a chopper?

4 A. Yes.

5 Q. Could you describe what a chopper is?

6 A. A chopper, or a chop, is an AK-47.

7 Q. You mentioned, "stick."

8 A. Uh-huh.

9 Q. Have you heard informants use the word, "stick?"

10 A. Often.

11 Q. Who else has used the word, "stick," or where else have
12 you heard that context referred to specifically as a firearm?

13 A. Informants, victims, defendants in various cases,
14 recorded calls.

15 Q. Is that also true of -- you mentioned, "banger."

16 A. Yes, sir.

17 Q. Have you heard the same sort of people refer to a
18 firearm as a banger?

19 A. Yes.

20 Q. Now, you testified earlier that a chopper specifically
21 referred to a unique type of firearm, correct?

22 A. Yes.

23 Q. And with respect to a "heater," does that refer to a
24 specific type of firearm?

25 A. Not necessarily.

1 Q. Have you ever heard it to describe one type of firearm
2 in particular, as opposed to just general firearms?

3 A. More often than not, it would be used to refer to a
4 pistol, a handgun.

5 Q. Are you familiar with a murder-for-hire investigation
6 involving recorded jail calls?

7 A. Yes.

8 MR. DePORRE: I would like to play a call from one
9 of those investigations. Ms. Szukhent, would you
10 start -- I'd like to mark this for purposes of the record as
11 Evidentiary Hearing Exhibit 1, or Hurt 1.

12 THE COURT: Do you have a copy of what it is you
13 want to mark?

14 MR. DePORRE: I don't. It's an audio recording.

15 THE COURT: Oh, I'm sorry. It's not the
16 transcript, it's just the recording?

17 MR. DePORRE: Correct.

18 THE COURT: Okay. So what is this a recording of?

19 MR. DePORRE: It is a recording -- a jail
20 recording in a murder-for-hire investigation.

21 THE COURT: All right. Any objection to this,
22 Mr. Longstreet?

23 MR. LONGSTREET: Is it this phone call?

24 MR. DePORRE: No.

25 MR. LONGSTREET: Then I'm objecting to the

1 relevance of what's in a phone call, in another unrelated
2 case, has to do with anything in this case. I would object
3 to it being played.

4 THE COURT: Is this -- yeah. Can you just respond
5 to that? I have a thought, but go ahead.

6 MR. DePORRE: Certainly, Your Honor. This is a
7 specific instance were a -- during a recorded phone call, it
8 is evident --

9 THE COURT: Hold on one second. Is something
10 beeping?

11 (A brief pause in the proceedings at 12:18 p.m.)

12 THE COURT: All right. So you were saying,
13 Mr. DePorre, this is a recorded jail call in an investigation
14 not related to this case; is that correct?

15 MR. DePORRE: That's correct.

16 THE COURT: All right. And you were going to
17 explain to me the relevance here?

18 MR. DePORRE: That's correct. It is evident from
19 the call that they are referring -- that the people speaking
20 on the call are referring to a "stick" as a gun or a firearm.

21 THE COURT: Is this an investigation that
22 Agent Hurt participated in --

23 MR. DePORRE: It is.

24 THE COURT: -- before today? It's actually -- in
25 other words, this is what I'm trying to get at. Under

1 Rule 702, a person can be qualified to offer an opinion based
2 on their experience.

3 MR. DePORRE: Correct.

4 THE COURT: So my question to you is, is this
5 recording -- listening to this recording, part of the law
6 enforcement experience that Agent Hurt had before coming in
7 today?

8 MR. DePORRE: It is.

9 THE COURT: Okay. Any response to that,
10 Mr. Longstreet?

11 MR. LONGSTREET: Again, it has no relevance or
12 bearing to the issues in this particular case, what somebody
13 else means in another case doesn't have anything to do with
14 what Mr. Garza means in this particular case, so I don't see
15 how it's relevant to the issues.

16 THE COURT: Okay. Thank you. I appreciate and
17 understand the objection. I'm going to overrule it, and I
18 want to make clear the basis on which I'm going to allow that
19 testimony for the purpose of this proceeding. As I
20 indicated, under Rule 702, a person can be qualified to offer
21 opinion testimony based on experience. And Mr. DePorre has
22 indicated to me that he will, in a series of questions with
23 Agent Hurt, establish that listening to this recording was
24 something that Agent Hurt did in the ordinary course of his
25 work, and thus, that the recording and monitoring it is part

1 of the experience that, according to the government,
2 qualifies Agent Hurt to offer an opinion as to the meaning of
3 these slang terms.

4 But before we play the recording, it is probably
5 helpful for you to lay the foundation first, before you do
6 that.

7 MR. DePORRE: Certainly, Your Honor.

8 BY MR. DePORRE:

9 Q. Special Agent Hurt, are you involved in an investigation
10 of a murder-for-hire case against a defendant who has been
11 charged in Federal Court, named Reginald Hunter?

12 A. Yes, sir.

13 Q. What's your role in that case?

14 A. I'm the agent in charge of the case, sir.

15 Q. And as the agent in charge, have you reviewed the
16 recorded jail calls from Mr. Hunter to third parties?

17 A. Yes.

18 Q. During one of those calls, are you familiar with
19 Mr. Hunter using the word, "stick"?

20 A. Yes.

21 MR. DePORRE: All right. May I play that call?

22 THE COURT: Is there -- I mean, he's now said that.
23 Is there any reason we need to hear the call? How long is
24 the call?

25 MR. DePORRE: I'm going to play about, I think, 13

1 seconds.

2 THE COURT: All right. I can spare 13 seconds.

3 MR. DePORRE: Thank you, Your Honor. If
4 Ms. Szukhent would start at 5 minutes and 41 into the call.

5 (Audio recording played for the Court
6 at 12:21 p.m.)

7 BY MR. DePORRE:

8 Q. In that call, did you hear La Kayla Marie Dunning ask
9 Regional Hunter what kind of gun it was that he was arrested
10 with?

11 A. I did.

12 Q. And did you hear him respond "like some sticks for
13 real"?

14 A. Yes, sir.

15 Q. And then did you hear her ask, "Was it an AK?"

16 A. I did.

17 Q. And what did he respond?

18 A. He said, "No."

19 Q. Based on your experience -- we talked a little bit about
20 a chopper meaning an AK, specifically. Are there any special
21 meanings that "stick" has, based on your experience and
22 training?

23 A. Yes. Oftentimes, when the term "stick" is used, it is
24 used for an extended magazine -- or a magazine that extends
25 beyond the grip of a pistol.

1 Q. And have you also heard the term, "banger," used for a
2 particular type of gun?

3 A. A particular type of gun, no.

4 Q. Could that refer to a handgun?

5 A. Yes.

6 Q. Could it refer to a long gun?

7 A. Yes.

8 Q. And that's all based on your experience, correct?

9 A. Correct.

10 Q. I'd like you to take a look at what has been marked as
11 Government's Exhibit 5C. This is trial exhibit Government
12 Exhibit 5C.

13 THE COURT: What is it?

14 MR. DePORRE: It's a photograph of the firearm that
15 was seized in this case.

16 THE COURT: Okay.

17 MR. DePORRE: Is it on all of the monitors?

18 THE COURT: It's not on mine, but I'm not sure why.
19 Can you see it, Mr. Longstreet?

20 MR. LONGSTREET: I can.

21 THE COURT: Okay.

22 BY MR. DePORRE:

23 Q. Can you see the firearm depicted in Government's
24 Exhibit 5C?

25 A. Yes, sir.

1 Q. Do you recognize that firearm?

2 A. I do.

3 Q. Who manufactured that firearm?

4 A. Ruger -- Sturm & Ruger.

5 Q. What model is it?

6 A. An EC9, nine-millimeter.

7 Q. And I think you answered the next question. It fires
8 nine-millimeter caliber ammunition?

9 A. Yes, sir.

10 Q. Have you seen -- could you turn to Government's
11 Exhibit 6B?

12 THE COURT: Is something beeping again?

13 MR. DePORRE: May I approach, Your Honor?

14 THE COURT: Yeah. Is that what was beeping?

15 MR. DePORRE: Yes.

16 THE COURT: Okay.

17 BY MR. DePORRE:

18 Q. Do you see the magazine in this case?

19 A. Yes, sir.

20 Q. And is this magazine a -- does it have any unique
21 attributes?

22 A. The only unique attribute I would see is that it has the
23 magazine extension for making the grip larger. So the black
24 piece that is on top of the butt plate, that would go down
25 over the actual magazine itself, would give you a longer

1 grip, for probably the pinkie finger of the shooter's hand.

2 Q. And would you go back to 5C, Ms. Szukhent?

3 A typical magazine for an EC9, that was the type of
4 firearm this is, correct?

5 A. Yes, sir.

6 Q. Where would that magazine end generally?

7 A. You can see above where that extension would be, and I
8 would guess that the manufacturer that, when it was sold,
9 would end flush with the bottom of that -- where the grip
10 actually stops at the bottom, where it meets that extension.

11 THE COURT: Do you know that or are you just
12 guessing?

13 A. I would guess at this point. I don't know that for a
14 fact.

15 BY MR. DePORRE:

16 Q. Are you familiar with most handguns?

17 A. Yes.

18 Q. And do most handguns -- do you know, for a fact, that
19 most handguns have a magazine, that the manufacturer makes,
20 that fits flush with the grip?

21 A. Yes.

22 MR. DePORRE: At this point, I would ask
23 Ms. Szukhent to play Government's Exhibit 11B. This is a
24 transcript of Mr. Garza's call with Madison Merrill.

25 THE COURT: Is this the one attached to your trial

1 brief?

2 MR. DePORRE: It is a portion of it, yes. It is a
3 very small portion of that call.

4 THE COURT: Okay.

5 (Audio recording played for the Court
6 at 12:27 p.m.)

7 MR. DePORRE: All right. Ms. Szukhent, would you
8 also play the full call, and begin at 5 minutes
9 and 40 seconds into the call.

10 (Audio recording played for the Court
11 at 12:27 p.m.)

12 MR. DePORRE: You can stop it.

13 BY MR. DePORRE:

14 Q. Special Agent Hurt, have you listened to the entire call
15 that was just played, you know, a portion of it here in court
16 today?

17 A. Yes.

18 Q. And are you familiar with the term, "whip"?

19 A. Yes.

20 Q. What is a "whip"?

21 A. It's usually referred to as a vehicle or a car.

22 Q. Okay. And how are you familiar with that term, "whip"?

23 A. I've heard it used countless times from -- over the
24 course of my career.

25 Q. When you heard the words, "stick" and "banger," in this

1 calls -- in these calls -- or these excerpts of calls, what
2 is your opinion about the meaning of the word, "banger,"
3 first?

4 A. The meaning, banger would be a firearm.

5 Q. And what is your opinion about the meaning of "stick"?

6 A. In that call, listening to it, it actually said,
7 "there's a stick in the banger," so it would mean to me that
8 it was the magazine protruding from the bottom of the grip,
9 meaning the stick in the banger, which is the magazine in the
10 firearm.

11 Q. And all of that is based on your experience and training
12 with listening to different calls and different people
13 describing firearms to you over the course of your law
14 enforcement career?

15 A. Yes, sir.

16 MR. DePORRE: All right. I have no further
17 questions.

18 THE COURT: Mr. Longstreet, before you ask your
19 questions, I have a few questions I want to ask.

20 Agent Hurt, you were asked about your experience
21 and you gave a fair bit of testimony about that, and you
22 talked about hearing these terms used, "heater," "stick,"
23 "banger," and that based on your experience, you understand
24 those terms to refer to firearms, right?

25 A. Correct.

1 THE COURT: So when Mr. DePorre played the first
2 recording, that was a recording in which I can understand how
3 somebody listening to that as part of their duties, you,
4 would conclude that the term -- I think it was "stick" that
5 was used in that recording?

6 A. Correct.

7 THE COURT: I can understand how you would regard
8 that term, "stick," as used is referring to a gun, because in
9 the context of that discussion itself, if you were listening
10 to it, the context would indicate to you that's what the
11 speaker meant.

12 Help me understand how, in the other times when
13 folks were using the term, "heater" or "banger" or "stick,"
14 you were able to understand that they were referring to a
15 firearm. Was it in a similar conversation where they
16 specifically said a name of a firearm and then used the term,
17 "stick," as a synonym? Was it in an interaction where they
18 pointed at a firearm and used the term, "stick" or "banger"?
19 In other words, help me understand what aspect of your
20 experience allowed you to conclude that when somebody was
21 using the term, "stick" or "banger," they were connecting it
22 to a firearm?

23 Was my question, in any way, clear? That was my
24 best effort.

25 A. Yes, I got it. So through the course of our duties, we

1 do a lot of controlled purchases with confidential informants
2 and such, and oftentimes a confidential informant and I will
3 talk and they'll say he's got "sticks on deck" or "sticks for
4 sale." And that means -- and I'll ask them to elaborate, and
5 they'll show me pictures of sticks that were sent to them for
6 sale, and, more often than not, they do have the extended
7 magazine. And I've had them break that down and tell me what
8 a lot of slang terms for firearms mean, that before my time
9 in Flint, I probably wasn't accustomed to, so --

10 THE COURT: If I am understanding you correctly,
11 the part of your experience with informants that is relevant
12 here, is you've had informants show you a photo of a firearm
13 and used the term, "stick," to describe the contents of the
14 photo?

15 A. Oftentimes.

16 THE COURT: What about -- you mentioned that your
17 interaction with witnesses is part of the experience that
18 helps you form an opinion that a reference to a "stick" or a
19 "banger" is to a firearm. Can you help me understand the
20 interactions you've had with witnesses that is relevant here?

21 A. I have spoken with witnesses on numerous shooting scenes
22 that have said so-and-so had a stick and returned fire before
23 fleeing. I was at a shooting scene yesterday, where I
24 believe the term, "stick," was used, when shots were being
25 fired into a vehicle in a neighborhood in the City of Flint.

1 THE COURT: So if I'm understanding you correctly,
2 are you saying that in your -- in repeated conversations that
3 you've had with witnesses, the context in which those
4 witnesses have used the terms, "stick" and "banger," has
5 indicated to you that they must have been referring to a
6 firearm?

7 A. On numerous occasions, yes.

8 THE COURT: All right. And the context, just so I
9 understand it, is, are you saying that they are referencing
10 "stick" or "banger" as firing bullets, that's one way?

11 A. So the stick, more often than not, refers to the
12 extended magazine that goes into the banger --

13 THE COURT: Right.

14 A. -- which would then, obviously, fire the bullet, but
15 yes.

16 THE COURT: But the references to "sticks" and
17 "bangers" are in the context of bullets being fired, is that
18 what you are saying?

19 A. Correct, yes, sir.

20 THE COURT: What about victims? What experience
21 have you had with victims that enables you to understand that
22 when they are using those terms, they are referring to a
23 firearm?

24 A. I've spoken with countless shooting victims that have
25 used those terms to explain to me how they were shot with a

1 stick or a banger or a firearm or the like.

2 THE COURT: And they've tied those terms to the
3 device that was doing the shooting, is that what you're
4 saying?

5 A. Yes, sir.

6 THE COURT: I think you also mentioned recorded
7 jail calls and we heard this one, where, as I said, I
8 understand how somebody listening to that call could conclude
9 that the reference to stick or banger, whatever was in that
10 call, is referring to a firearm, because it was in the
11 context of somebody else using a proper name for a firearm.

12 Have other jail calls been like that,
13 where -- how -- let me try this a different way.

14 If I listened to a jail call and somebody just
15 threw out the word, "banger" or "stick," unless there was
16 some context, I wouldn't know what they were talking about.
17 Can you help me understand the type of context of these other
18 calls that you listened to, that enabled you to conclude that
19 references to stick or banger were to a firearm?

20 A. A lot of the time, through the course of my
21 investigative career, it's been the vast majority of the
22 crime I have investigated have been violent crimes, usually
23 involving a firearm. So when I first started -- it takes a
24 while, I guess is what I'm saying. It takes practice and it
25 takes talking to CIs and talking to witnesses and talking to

1 victims, and after a while, you start picking up the terms
2 and the terminology.

3 THE COURT: Let me ask a better question. When you
4 listen to these recorded jail calls, were others of those
5 calls like this one, where the use of the term, "stick" or
6 "banger," was in connection with an unmistakable, explicit
7 reference to a firearm?

8 A. Numerous calls.

9 THE COURT: Okay. I'm all set with my questions.

10 MR. LONGSTREET: Thank you.

11 CROSS-EXAMINATION

12 BY MR. LONGSTREET:

13 Q. Is it detective, sergeant, agent; what's your title?

14 A. Agent is fine.

15 Q. Agent. All right. Sir, you had an opportunity to
16 listen to the phone call associated with the case, with
17 Mr. Noe Garza; is that correct?

18 A. Correct.

19 Q. All right. And in that particular phone call, you hear
20 the word, "banger," used on multiple occasions; is that
21 correct?

22 A. Yes, sir.

23 Q. Okay. And in that particular phone call, when the word,
24 "banger," is used, it's not necessarily referring to a gun,
25 is it?

1 A. In my opinion, it is, yes.

2 Q. So when he says, "I'm about to bang on them niggers,"
3 does that mean he's about to shoot at them or he's about to
4 fight them?

5 A. It made it sound like when he was trying to get out, and
6 made it sound like he was going to bang on them, as in shoot
7 at them.

8 Q. Okay. But can't, also, a person getting into a
9 fistfight mean, I'm banging on somebody?

10 A. You could, yes.

11 Q. Okay. Have sex with a woman, you could be banging on
12 her?

13 A. Yes.

14 Q. Okay. There's other -- banger doesn't always
15 necessarily mean gun, correct?

16 A. Correct.

17 Q. It also means good music; that song was a banger?

18 A. Yes, sir.

19 Q. So the meaning of the word is, ultimately, in regards to
20 how it's being used?

21 A. Say that again, sir.

22 Q. The meaning of a word is sometimes depending on how the
23 word is being used?

24 A. Yes, sir.

25 Q. Okay. Now, in the phone call we previously listened to,

1 referring to your murder investigation, the person who was
2 referring to a gun said "gun," correct?

3 A. He said, "stick."

4 Q. Okay. I'm talking about the woman.

5 A. I believe so, yes.

6 Q. And he says, "some sticks or something"; is that
7 correct?

8 A. Yes, sir.

9 Q. Now, also, you indicated that a stick was a firearm with
10 an extended clip; is that correct?

11 A. A magazine, yes.

12 Q. Okay. But not every time a person is talking about a
13 stick are they referring to an extended clip?

14 A. I would agree.

15 Q. Okay. They could be talking about a gun itself,
16 correct?

17 A. Correct.

18 Q. Okay. Or it could be talking about a machete?

19 A. I've never heard a machete referred to as a --

20 Q. How about a stick?

21 A. A --

22 Q. A stick is a stick, right?

23 A. Yes, sir.

24 Q. So a stick doesn't necessarily mean gun, correct?

25 A. Correct.

1 Q. All right. Now, during your time and experience, have
2 you ever heard of or referred someone -- or
3 referred -- someone refer to gun or banger and not be talking
4 about a firearm?

5 THE COURT: You said, gun.

6 MR. LONGSTREET: I did. Let me rephrase my
7 question. Strike that.

8 BY MR. LONGSTREET:

9 Q. Have there been times, during your time as an officer,
10 that you referred -- heard someone refer to banger and not be
11 talking about a gun?

12 A. I haven't -- the context that you just talked about,
13 like a banger of a song or something like that, I have, yes.

14 Q. And you also heard a conversation or where people talked
15 about sticks and weren't talking about a gun?

16 A. Usually, in the context of my work, a stick is usually
17 referred to as a gun or a firearm.

18 Q. But it doesn't necessarily have to mean gun, correct?

19 A. Correct.

20 Q. What, if any, special training or experience did
21 you -- have you received, in your time as a police officer,
22 that indicates to you that gives definitions of slang terms?

23 A. I would say, no formal training in slang terms.

24 Q. Just simply how certain people use those particular
25 words, correct?

1 A. Correct.

2 Q. Okay. And would you say language is also regional, so
3 banger might mean something one place, but it means something
4 else someplace else?

5 A. It could.

6 Q. Okay. So ultimately, the meaning of a word is up to a
7 person's particular interpretation; would that be correct?

8 A. I would agree.

9 Q. And that would be your interpretation of what that word
10 means, not necessarily what the speaker actually meant.
11 Would you agree with that?

12 A. It could be.

13 MR. LONGSTREET: Thank you. Nothing further.

14 THE COURT: Any other questions, Mr. DePorre?

15 MR. DePORRE: Just one.

16 REDIRECT EXAMINATION

17 BY MR. DePORRE:

18 Q. Of the years you've been in law enforcement, how many of
19 those years have been spent in Michigan?

20 A. All of them.

21 Q. And of the years you've been in law enforcement, how
22 many have been in Flint?

23 A. Ten, approximately.

24 Q. And how many have been in Lansing?

25 A. An additional one -- one and a half.

1 Q. Well, in the Lansing area.

2 A. Four.

3 Q. Were you assigned anywhere besides Flint and Lansing?

4 A. With the State Police?

5 Q. With the State Police, Grand Ledge, Lansing area, metro
6 areas, at any point with ATF or the State Police?

7 A. No, sir.

8 MR. DePORRE: I have no further questions.

9 THE COURT: Mr. Longstreet, any follow-up?

10 MR. LONGSTREET: No.

11 THE COURT: Thank you. You may step down. Thank
12 you for your time today.

13 (Witness excused at 12:40 p.m.)

14 THE COURT: Do you want to offer any testimony that
15 he was qualified to offer opinion about the meaning of
16 "stick" and "banger"?

17 MR. DePORRE: Very briefly. What we are really
18 focusing on is whether or not Mr. Hurt's experience qualifies
19 him to offer an opinion about those meanings. And he's
20 testified that he has heard those terms specifically
21 referencing firearms, that he's heard that term, "stick,"
22 specifically referencing a firearm with an extended magazine
23 on numerous occasions and in various contexts. And so the
24 government does maintain that he's qualified to offer an
25 opinion as to this case, with respect to the meaning of

1 "stick" and "banger."

2 Certainly, that's not going to be the ultimate
3 issue for -- you know, the jury will have to conclude whether
4 or not he's able to -- whether or not they agree with his
5 opinion and that's a jury question, but I do believe that he
6 meets the threshold burden to offer that opinion today.

7 THE COURT: Okay. Thank you.

8 Mr. Longstreet, your response?

9 MR. LONGSTREET: The defense disagrees --

10 THE COURT: Would you mind coming to this
11 microphone?

12 MR. LONGSTREET: Very good.

13 THE COURT: It is easier on your neck and we can
14 hear you better.

15 MR. LONGSTREET: The defense respectfully disagrees
16 with the prosecutor's -- the government's position that
17 the -- this agent is qualified to testify as to the
18 particular meaning of words. Clearly, the meaning of a word
19 is ultimately determined by the speaker and also the context
20 of which the word is being used.

21 This officer can testify as to what his
22 opinion -- what he believes that word to mean, but
23 ultimately, the meaning of that word and the determination of
24 that word should be determined by the jury.

25 I don't think, at this point, that the government

1 has put on enough evidence, at this point, to suggest that
2 this officer's experiences, along with any of his specialized
3 training or education, provides him specialized knowledge to
4 assist the trier of fact in regard to what "banger" or
5 "stick" means, seeing as how, in this particular phone call
6 with Mr. Garza, the word, "banger," is used multiple times,
7 not necessarily meaning shoot and/or gun. Also, the officer
8 testified that those words can be used in context and not
9 necessarily mean a firearm.

10 I think it should be left up to the jury to
11 determine what that word means, and the officer should not be
12 allowed to simply say what it means.

13 Thank you.

14 THE COURT: Okay. Thank you very much for your
15 thoughts, Mr. Longstreet.

16 I'm persuaded that the government has established
17 that Agent Hurt is qualified to offer the opinion testimony.
18 Again, the step one is from *Kilpatrick*, where the
19 Sixth Circuit says, "Courts often qualify law enforcement
20 officers as expert witnesses under Rule 702, to interpret
21 intercepted conversations that use slang, street language and
22 jargon of the illegal drug trade."

23 So then we have to ask, is Agent Hurt the type of
24 witness who is qualified? And Rule 702 offers a number of
25 different ways that a witness can be qualified. One is by

1 experience.

2 And I'm satisfied that Agent Hurt's answers to my
3 questions, particularly the ones where I probed in some
4 detail about the nature of his experience, I'm satisfied that
5 his experience qualifies him to offer the opinion that
6 "banger" and "stick" are references to firearms.

7 Agent Hurt offered four sources of experience that
8 would, in my view, be relevant to his qualifications to offer
9 that opinion. The first was his experience with numerous
10 informants. And I asked him, how did you know that when the
11 informants were using the term, "banger" or "stick," they
12 were referring to a firearm? And he gave an answer to that
13 question. He explained that it was not uncommon for them to
14 refer to photos and point to a firearm. So that would be an
15 experience that he has, repeatedly, where the terms are being
16 connected expressly to firearms.

17 He gave a similar answer when I asked him about how
18 his interactions with witnesses led him to conclude that when
19 they referring to a "stick" or "banger," they were referring
20 to a firearm.

21 He did the same with victims, telling me that
22 victims would use that term and explicitly connect it to
23 somebody firing bullets.

24 And with respect to jail calls and recorded calls,
25 he mentioned that there were many that he listened to that,

1 like the one that Mr. DePorre played from a different case,
2 in many of these calls, there were expressed connections
3 between the terms "stick" and "banger" and firearms.

4 So in my view, Agent Hurt has sufficient
5 qualifications to offer the opinions on the meaning of
6 "stick" and "banger" as used in the recorded calls that the
7 government intends to offer him for.

8 Mr. Longstreet, as you always do, you have raised a
9 number of serious arguments, and I think the testimony that
10 you elicited today, if you elicit it before the jury, will
11 give you a number of arguments available to the defense when
12 you are arguing to the jury to try to undermine the force of
13 the testimony. And I agree with you that, ultimately, this
14 will be the question for the jury, and you will have many
15 arguments available to you to suggest that, notwithstanding
16 Agent Hurt's testimony, "stick" and "banger" didn't mean gun
17 here, and you will presumably be able to elicit from him, in
18 front of the jury, many of the acknowledgements that he made
19 here, during your cross-examination.

20 So I think that that is the appropriate way to deal
21 with this. I can't remember if this was Mr. DePorre's motion
22 to offer this testimony or --

23 MR. LONGSTREET: It was my motion to exclude.

24 THE COURT: It was the motion to exclude. So the
25 motion to exclude will be denied, and I will permit the

1 government to offer the opinion testimony from Agent Hurt
2 with respect to his interpretation of the terms "stick" and
3 "banger" as used on the recorded telephone calls.

4 So when we get to Agent Hurt's testimony in front
5 of the jury, rather than rehash this argument which we've
6 created, as you guys know, in the Sixth Circuit, we don't
7 formally move to qualify somebody as experts. Mr. DePorre,
8 the proper procedure in a Sixth Circuit published case
9 written by Judge Lawson sitting up there, is for you to call
10 Agent Hurt to lay the foundation that was laid today, in
11 terms of how his experience qualifies him. And if -- and you
12 can tender him to offer an opinion, and at that point, the
13 defense can simply say you renew your objections from Friday,
14 I will overrule them, and we will move on. That way the
15 issue is preserved and we have proceeded in the appropriate
16 way.

17 Are you okay proceeding that way, Mr. DePorre?

18 MR. DePORRE: Yes, Your Honor. Thank you.

19 THE COURT: Mr. Longstreet?

20 MR. LONGSTREET: Yes.

21 THE COURT: Okay. All right.

22 (Excerpt of offer to proof concluded at 12:48 p.m.)

23 — — —

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of UNITED STATES OF AMERICA vs. NOE GARZA, Case No. 21-20405, on Thursday, November 10, 2022.

s/Robert L. Smith

Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 11/11/2022
Detroit, Michigan